

Editor's note: Reconsideration denied by Order dated Feb. 11, 1985

CAROLYN J. McCUTCHIN

IBLA 84-432

Decided January 24, 1985

Appeal from decision of the New Mexico State Office, Bureau of Land Management rejecting simultaneous oil and gas lease offer NM-A57558.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Under 30 U.S.C. § 226(b) (1982), lands within the known geological structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure after a simultaneous oil and gas lease drawing but prior to issuance of a lease, a lease offer for such lands must be rejected. The offeror has no vested rights to issuance of a lease.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Where BLM rejects a noncompetitive oil and gas lease offer on the grounds the parcel sought to be leased lies within a known geologic structure, in the absence of supporting geological data in the record on appeal, a challenge to the determination requires the decision be set aside as unsupported in fact.

APPEARANCES: Carolyn J. McCutchin, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Carolyn J. McCutchin appeals from a decision dated April 5, 1984, by the New Mexico State Office, Bureau of Land Management (BLM), rejecting her simultaneous oil and gas lease offer NM-A57558. Appellant's application was drawn with first priority in the August 1983 simultaneous drawing, for

parcel MN-248 situated in sec. 33 of T. 21 N., R. 3 W., New Mexico Principal Meridian, Sandoval County, New Mexico. On February 22, 1984, BLM notified McCutchin that she was required to submit signed oil and gas lease offer forms and advance first-year rental for the parcel. After she filed the offer forms and paid the rental BLM rejected the application because, effective March 15, 1984, the land had been determined to be within an unnamed undefined known geologic structure (KGS).

On appeal appellant contends that BLM was negligent when it waited from July 1983 until April 5, 1984, to determine whether the lands requested in her application were in a KGS. Appellant denies there is oil or gas production near parcel NM 248 so as to support the BLM determination that the lease parcel is within a KGS.

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that public domain lands which are within the KGS of a producing oil or gas field "shall be leased * * * by competitive bidding." See also 43 CFR 3100.3-1(a). Where lands embraced in a noncompetitive oil and gas lease offer are designated as within a KGS prior to lease issuance the lease offer must be rejected. R. C. Altrogge, 78 IBLA 24 (1983). 43 CFR 3112.5-2(b). The Department lacks discretion to issue a noncompetitive oil and gas lease for such lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Lloyd Chemical Sales, Inc., 82 IBLA 182 (1984).

[2] Here, as was the case in Thomas Connell, 82 IBLA 132 (1984), there is nothing in the BLM case file before this Board on appeal to disprove appellant's factual assertion that her lease parcel is not within a KGS. In Connell, this Board stated that where a KGS determination is challenged, the record on appeal must contain enough information to permit an informed decision by this Board of the issue presented. What was said in Connell applies with equal force in this case,

[W]here on appeal from rejection of a noncompetitive oil and gas lease offer, appellant submits evidence tending to contradict a determination that land embraced in the lease offer is within a KGS and there is nothing in the record to support the decision except the conclusory statement that the land is in a KGS, the decision may appropriately be set aside and the case remanded to substantiate the basis for the KGS determination in light of the information tendered by appellant.

Thomas Connell, supra at 133. Here, appellant contends, as a matter of fact, that there is no nearby oil or gas production and that her lease cannot, therefore, be properly included within any KGS. Since the BLM case file does not reveal the operative facts and geologic analysis upon which the KGS determination was based, the decision to reject appellant's lease offer is without sufficient factual basis to withstand challenge.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

from is set aside and the BLM case file remanded for action consistent with this decision.

Franklin D. Arness
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

ATTACHMENTS: February 11, 1985

IBLA 84-432

CAROLYN J. McCUTCHIN

NM-A57558

Noncompetitive Oil and Gas Lease Offer

Request for Reconsideration Denied

ORDER

On February 6, 1985, the Board received a letter from Carolyn J. McCutchin which included the following request: "I hereby appeal to you again to issue the above-referenced lease without further delay." Although this submission was not formally presented as a petition for reconsideration of the above-captioned appeal, we shall treat it as such.

The appeal emanated from a Bureau of Land Management (BLM) decision that the land embraced in McCutchin's noncompetitive oil and gas lease offer was within an undefined known geologic structure and therefore unavailable for noncompetitive leasing. We held in Carolyn J. McCutchin, 84 IBLA 368 (1985), that the decision to reject appellant's lease offer was without sufficient factual basis because the BLM case file did not reveal the operative facts and geological analysis upon which the determination was made. Accordingly, the appealed decision was set aside and the case remanded to substantiate the basis for the determination.

Although the Board's decision was technically in appellant's favor, the present request encourages the Board to reconsider its position and determine that a noncompetitive lease should be issued. However, the Board's decision was based upon the rationale that there was not enough information available to reach a conclusion that the land should be leased competitively or noncompetitively. Reconsideration of a decision may be granted only in extraordinary circumstances where the Board considers that sufficient reasons exist. Such request must state with particularity the error claimed. 43 CFR 4.21(c). Petitioner has not disclosed any extraordinary circumstances or alleged any reasons to justify reconsideration of the Board's decision.

McCutchin's letter also asks the Board to furnish the materials used by BLM for its determination. Our decision was rendered because the Board did not have access to such information. However, it should be available for review at the BLM office concerned and included in the case file for the subject lease offer prior to any subsequent BLM decision regarding issuance of the lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is denied.

Franklin D. Arness

Administrative Judge

We concur:

Bruce R. Harris Administrative Judge

Edward W. Stuebing Administrative Judge.

APPEARANCES:

Carolyn J. McCutchin P.O. Box 800903 Dallas, Texas 75380

